IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 17799 of 2006(R)

PETITIONER:

NAROTH PADMANABHAN,
S/O. RAMAN, POOCHOL HOUSE, TRIKARIPUR P.O.,
KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS:
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1. SPECIAL DEPUTY TAHSILDAR (R.R.)
HOSDURG, KASARAGOD DISTRICT.

2. EXECUTIVE ENGINEER,
P.H. DIVISION, KERALA WATER AUTHORITY,
KASARAGOD.

ADDL. R3 IMPLEADED

3. KERALA WATER AUTHORITY,
REP. BY SECRETARY, THIRUVANANTHAPURAM.

ADDL.R3 IMPLEADED AS PER ORDER DT. 8.8.06 IN IA. 10402/2006

BY ADV. SMT.AMBIKA DEVI, SC, KWA - R2 & R3
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.17799/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NOTICEDT. 1.12.04 SEND BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P2:- COPY OF THE REPRESENTATION DT. 16.1.05.

EXT.P3:- COPY OF THE NOTICE DT. 7.2.06 SENT BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P4:- COPY OF THE NOTICE DT. 22.3.06 SENT BY THE 1ST RESPONDENT TO THE PETITIONER.

RESPONDENTS EXHIBITS

EXT.R2(a):- COPY OF THE AGREEMENT DT. 13.10.00 BETWEEN THE PETITIONER 4TH AND 2ND RESPONDENT.

EXT.R2(b):- COPY OF THE PROCEEDINGS OF 2ND RESPONDENT DT. 16.9.02 TERMINATING THE WORK AWARDED TO THE PETITIONER.

EXT.R2(c):- COPY OF THE LETTER SEND BY THE PETITIONER DT. 30.9.02 TO THE MINISTER.

/TRUE COPY/

P.A. TO JUDGE

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C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.17799 of 2006

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Dated this the 10th day of August, 2007.

JUDGMENT

The petitioner is challenging recovery proceedings for recovery of arrears due to Kerala Water Authority. I heard counsel for the petitioner and Standing Counsel for Water Authority and have also gone through the W.P. and counter affidavit. The petitioner has also filed a reply affidavit repeating what he has stated in the W.P. The petitioner was awarded a contract on 13.10.2000 for construction of overhead tank, pump house and compound wall. Cement and steel supplied to petitioner by the Water Authority was of the value of Rs.1,21,326/-. Since petitioner refused to execute the work, notice was issued to him by the Water Authority requesting to complete the work. However, petitioner did not send any responsible reply inspite of protracted correspondence which is evident from Ext.R2(b). The petitioner did not take up and complete the work, but obviously misappropriated the goods supplied namely, cement and steel. Accordingly contract was cancelled and work was awarded to another contractor at the risk and cost of the petitioner in terms of the original contract which is produced along with counter affidavit as Ext.R2(a). The

petitioner's case before this court is that the goods supplied by Water Authority were not of good quality which is an untenable argument because goods supplied are admittedly steel and cement and it is not stated as to what was the defect with regard to these items. In any case petitioner had to execute the work with the steel and cement supplied and if respondents suffer on account of poor quality materials, petitioner had no responsibility. The petitioner's allegation is only a lame excuse is evident from his letter written to the Minister produced as Ext.R2(c) by respondents wherein the petitioner has admitted that work could not be completed because of financial difficulty. Moreover, it is clear from Ext.R2(b) itself that petitioner has not replied responsibly to any letter written by the Water Authority. On the other hand, all what he did was to request for renewal of original contract after cancellation of order dated 16.9.2002.

2. The petitioner has no case that contract was executed or tried to be executed in time. In the circumstances, cancellation of contract cannot be questioned by petitioner. Further, tender conditions which form part of the contract admittedly provide for cancellation of contract at the risk and cost of the contractor. Since contract is admittedly not executed and there was no sign of petitioner ever executing the work, it was rightly cancelled by the Water Authority. Therefore, challenge against cancellation of contract is

only to be dismissed.

3. So far as challenge against amount sought to be recovered is concerned, I find the break up details given in the counter affidavit shows that out of Rs.1,96,301/- demanded, Rs.1,21,326/- accounts for value of materials alone. The loss on account of re-tender claimed is Rs.55,314/- and all other amounts claimed are cost incurred by the Water Authority. In the circumstances, there is no ground to interfere with the amount sought to be recovered. However, I feel petitioner can be granted complete waiver of interest if he clears the arrears in two instalments, first of which will be paid on or before 30.9.2007 and the balance on or before 31.10.2007. If petitioner makes payment voluntarily, then no collection charges also should be recovered from the petitioner. However, if petitioner commits default in payment as above, the entire amount will be recovered with interest and collection charges.

W.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms